

service in a primary or secondary position and meets the conditions for credit must follow the procedure in paragraph (b) of this section. Except as provided in paragraph (d) of this section, the request must be made to the agency where the claimed service was performed.

(d) For a current or former employee seeking credit under 5 U.S.C. 8336(c) for service performed at an agency that is no longer in existence, and for which there is no successor agency, OPM will accept, directly from the current or former employee (or the survivor of a former employee), a request for a determination as to whether a period of past service qualifies as service in a primary or secondary position and meets the conditions for credit.

(e) Coverage in a position or credit for past service will not be granted for a period greater than 1 year prior to the date that the request from an individual is received under paragraphs (b), (c), or (d) of this section by the employing agency, the agency where past service was performed, or OPM.

(f) An agency head, in the case of a request filed under paragraph (b) or (c) of this section, or OPM, in the case of request filed under paragraph (d) of this section, may extend the time limit for filing when, in the judgment of such agency head or OPM, the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

§ 831.907 Withholdings and contributions.

(a) During the service covered under the conditions established by § 831.903 and § 831.904, the employing agency will deduct and withhold from the employee's base pay the amount required under 5 U.S.C. 8334(a) for such positions and submit that amount, together with agency contributions required by 5 U.S.C. 8334(a), to OPM in accordance with payroll office instructions issued by OPM.

(b) If the correct withholdings and/or Government contributions are not submitted to OPM for any reason whatsoever, including cases in which it is finally determined that past service of a current or former employee was sub-

ject to the higher deduction and Government contribution rates, the employing agency must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the agency waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM without delay as soon as possible.

(c) Upon proper application from an employee, former employee or eligible survivor of a former employee, an employing agency or former employing agency will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit or redeposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(d) The additional employee withholding and agency contribution for covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339(d).

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

[58 FR 64367, Dec. 7, 1993, as amended at 60 FR 3339, Jan. 17, 1995]

§ 831.908 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in

primary and secondary positions. A mandatory separation under section 8335(b) is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter. Section 831.502 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

[58 FR 64367, Dec. 7, 1993, as amended at 66 FR 38524, July 25, 2001]

§ 831.909 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a re-employed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§ 831.910 Review of decisions.

(a) The final decision of an agency head or OPM issued to an employee, former employee, or survivor as the result of a request for determination filed under § 831.906 may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

(b) The final decision of an agency head that a break in service referred to in § 831.904(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8336(d)(1) may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board.

[66 FR 38524, July 25, 2001]

§ 831.911 Oversight of coverage determinations.

(a) Upon deciding that a position is a law enforcement officer or firefighter position, each agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the

title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke an agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8336(c).

(b) Each agency must establish a file containing each coverage determination made by an agency head under § 831.903 and § 831.904, and all background material used in making the determination.

(c) Upon request by OPM, the agency will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, an agency must submit to OPM a list of all covered positions and any other pertinent information requested.

(e) A coverage determination issued by OPM or its predecessor, the Civil Service Commission, will not be reopened by an employing agency, unless the agency head determines that new and material evidence is available that, despite due diligence, was not available before the decision was issued.

REGULATIONS PERTAINING TO NONCODIFIED STATUTES

§ 831.912 Elections to be deemed a law enforcement officer for retirement purposes by certain police officers employed by the Metropolitan Washington Airports Authority (MWAA).

(a) *Who may elect.* Metropolitan Washington Airports Authority (MWAA) police officers employed as members of the MWAA police force as of December 21, 2000, who are covered by the provisions of the Civil Service Retirement System by 49 U.S.C. 49107(b) may elect to be deemed a law enforcement officer for retirement purposes and have past service as a member of the MWAA and Federal Aviation Administration police forces credited as law enforcement officer service.

(b) *Procedure for making an election.* Elections by an MWAA police officer to be treated as a law enforcement officer for retirement purposes must be made